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Pantai Bayu Emas Sdn Bhd & Ors v Southern Bank Bhd

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02–589 OF 2007
LOW HOP BING, ZAINUN ALI AND HASAN LAH JJCA
15 OCTOBER 2008

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Banking — Banks and banking business — Banking regulation — Assignment of assets and liabilities by transferor bank to transferee bank — Vesting order under s 50 of the Banking and Financial Institutions Act 1989 — Vesting order obtained in High Court in Malaya at Kuala Lumpur — Whether such vesting order effective in Sabah and Sarawak — Courts of Judicature Act 1964 s 7(2) — Federal Constitution art 121(3)

D

Banking — Banks and banking business — Banking regulation — Vesting order under s 50 of the Banking and Financial Institutions Act 1989 — Nature and scope of s 50 — Whether to regulate application for vesting order — Whether to facilitate effectual transfer of whole or part of business, assets, rights and liabilities from predecessor bank to successor bank — Whether provision aimed to avoid obstacles that stand in the way of substantial justice

E

F

Civil Procedure — Court — Jurisdiction — High Court — Jurisdiction to try all civil proceedings — Whether such jurisdiction would exclude operation in Sabah and Sarawak, of vesting order made by the High Court in Malaya at Kuala Lumpur — Courts of Judicature Act 1964 s 23(1)

G

Civil Procedure — Judgments and orders — Enforcement — Vesting order obtained in High Court in Malaya at Kuala Lumpur — Whether such vesting order effective in Sabah and Sarawak — Courts of Judicature Act 1964 s 7(2) — Federal Constitution art 121(3)

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I

The plaintiff bank sued the defendants in the High Court in Sabah and Sarawak at Kuching ('the Kuching suit') to recover moneys owing under certain banking facilities. The plaintiff entered into an agreement with CIMB Bank Bhd ('CIMB Bank'), to assign to CIMB Bank all its rights, assets and liabilities including all legal proceedings. Following such assignment, the plaintiff and CIMB Bank made a joint application to the High Court in Malaya at Kuala Lumpur, pursuant to the Banking and Financial Institutions Act 1989 ('BAFIA'), and obtained a vesting order on 6 September 2006 ('the

vesting order'). Based on the vesting order, the plaintiff and CIMB Bank made an application in the Kuching suit to substitute CIMB Bank as the plaintiff. The defendants applied to strike out the Kuching suit on the basis that the vesting order was incompetent and CIMB Bank did not have the requisite locus standi. The High Court granted the order for substitution and dismissed the striking out application. The defendants thus appealed to the Court of Appeal. The issue for the Court of Appeal's determination was whether the vesting order made under s 50 of the BAFIA ('s 50') by the High Court in Malaya at Kuala Lumpur, was effectual in transferring to and vesting in CIMB Bank all the plaintiff's rights, assets and liabilities throughout all the territories of Malaysia viz Malaya, Sabah and Sarawak.

Held, dismissing the appeal with costs:

(1) Section 23(1) of the Court of Judicature Act 1964 ('CJA') deals with the 'jurisdiction to try'. Section 23(1) does not deal with nor is it intended to regulate the efficacy of a vesting order. Section 23(1) does not exclude the operation, in Sabah and Sarawak, of the vesting order made by the High Court in Malaya at Kuala Lumpur (see para 20).

(2) The intention of the law, as expressed in s 50(1), (3), (4), (6) and (7) as a whole is to regulate the application for a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the predecessor bank to the successor bank, and not to set up obstacles to stand in the way of substantial justice (see para 21).

(3) The view that the vesting order made in the High Court of Malaya at Kuala Lumpur would give effect to the vesting exercise throughout Malaysia is made stronger by s 7(2) of the CJA and art 121(3) of the Federal Constitution. Section 7(2) of the CJA contains mandatory provisions prescribing that orders issued or made by the authority of the High Court respecting any cause or matter within its jurisdiction shall have full force and effect throughout Malaysia. Article 121(3) of the Federal Constitution on the other hand clearly provides for any order or judgment to have full force and effect according to its terms throughout all the territories constituting the federation, ie Malaya, Sabah and Sarawak. It also enables federal law to provide for one High Court to act in aid of the other. In the instant case, the vesting order was effectual in transferring the business of the plaintiff located in any part of Malaysia to CIMB Bank and was effective throughout the whole of Malaysia (see paras 3–31 & 37–38); *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551 overruled.

[Bahasa Malaysia summary

Bank plaintif telah menyaman defendan di Mahkamah Tinggi Sabah dan Sarawak di Kuching ('guaman Kuching') untuk mendapat balik wang yang tertunggak di bawah kemudahan kewangan tertentu. Plaintif telah memasuki perjanjian dengan CIMB Bank Bhd ('CIMB Bank'), untuk menyerah hak kepada CIMB Bank Bhd semua hak, aset dan liabiliti termasuk semua prosiding sah. Berikutan penyerahhakan tersebut, plaintif dan CIMB Bank Bhd telah membuat permohonan bersama ke Mahkamah Tinggi Malaya di Kuala Lumpur, menurut Akta Bank dan Institusi-Institusi Kewangan 1989 ('ABIK'), dan memperoleh perintah letakhak pada 6 September 2006 ('perintah letakhak'). Berdasarkan perintah letakhak, plaintif dan CIMB Bank Bhd telah membuat permohonan dalam guaman Kuching untuk menggantikan CIMB Bank sebagai plaintif. Defendan telah memohon untuk membatalkan guaman Kuching itu atas dasar perintah letakhak itu tidak kompeten dan CIMB Bank tidak mempunyai locus standi yang diperlukan. Mahkamah Tinggi telah memberikan perintah untuk penggantian dan menolak permohonan pembatalan itu. Defendan oleh itu telah merayu ke Mahkamah Rayuan. Isu untuk ditentukan oleh Mahkamah Rayuan adalah sama ada perintah letakhak yang dibuat di bawah s 50 ABIK ('s 50') oleh Mahkamah Tinggi Malaya di Kuala Lumpur, dikuatkuasakan dalam memindahkan kepada dan meletakhak dalam CIMB Bank semua hak, aset dan liabiliti plaintif di seluruh wilayah Malaysia iaitu Malaya, Sabah dan Sarawak.

Diputuskan, menolak rayuan dengan kos:

(1) Seksyen 23(1) Akta Mahkamah Kehakiman 1964 ('AMK') membincangkan 'jurisdiction to try'. Seksyen 23(1) tidak membincangkan mahupun berniat untuk mengawal keberkesanan perintah letakhak. Seksyen 23(1) tidak mengecualikan penguatkuasaan, di Sabah dan Sarawak, perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur (lihat perenggan 20).

(2) Tujuan undang-undang tersebut, seperti yang dinyatakan dalam s 50(1), (3), (4), (6) dan (7) secara keseluruhannya adalah untuk mengawal permohonan untuk perintah letakhak dan untuk memudahkan keberkesanan pindah milik seluruh atau sebahagian daripada perniagaan, aset, hak dan liabiliti daripada bank terdahulu kepada bank pengganti, dan bukan untuk menghalang keadilan (lihat perenggan 21).

(3) Pendapat bahawa perintah letakhak yang dibuat oleh Mahkamah Tinggi Malaya di Kuala Lumpur akan memberi kesan kepada

pelaksanaan letakhak di seluruh Malausia menjadi lebih kukuh oleh s 7(2) AMK dan perkara 121(3) Perlembagaan Persekutuan. Seksyen 7(2) AMK mengandungi peruntukan mandatori yang menetapkan bahawa perintah-perintah yang dikeluarkan atau dibuat oleh pihak berkuasa Mahkamah Tinggi berkaitan apa-apa kausa atau perkara dalam bidang kuasanya hendaklah berkuat kuasa dan dilaksanakan sepenuhnya di seluruh Malaysia. Perkara 121(3) Perlembagaan Persekutuan sebaliknya dengan jelas memperuntukkan untuk apa-apa perintah atau penghakiman berkuat kuasa dan dilaksanakan sepenuhnya menurut terma-termanya di seluruh wilayah yang membentuk persekutuan, iaitu Malaya, Sabah dan Sarawak. Ia juga membolehkan undang-undang persekutuan memperuntukkan satu Mahkamah Tinggi bertindak sebagai pembantu kepada yang lain. Dalam kes ini, perintah letakhak telah dikuatkuasakan dalam memindah milik perniagaan plaintif yang terletak di mana-mana bahagian Malaysia kepada CIMB Bank dan berkuat kuasa di seluruh Malaysia (lihat perenggan 3–31 & 37–38); *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551 ditolak.]

Notes

For a case on banking regulation, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1883.

For cases on enforcement of judgments and orders, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 4119–4129.

For cases on jurisdiction of court, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2252–2255.

Cases referred to

Attorney-General of the Gambia v Momodou Jobe [1984] AC 689 (refd)

Central Provinces & Berar Sales of Motor Spirit & Lubricants Taxation Act, Re AIR 1939 FC 1 (refd)

Dato' Hari Menon @ Dato' T Puraharan a/l CP Ramakrishnan (suing as legal representative of DYMM Tuanku Ja'afar Ibni Almarhum Tuanku Abdul Rahman, Yang di Pertuan Besar Negeri Sembilan Darul Khusus) v Texas Encore LLC & Ors [2005] 4 MLJ 506 (refd)

Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (refd)

Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'ayatuddin Al Mu'adzam Shah [1996] 1 MLJ 617 (refd)

Kesavananda Bharati v The State of Kerala AIR 1973 SC 1461 (refd)

Lee Hui Jian (f) v Public Bank Bhd [2007] 2 CLJ 551 (ovrd)

Leong Moh Sawmill Co Sdn Bhd (in liquidation) v Standard Chartered Bank & Ors [1996] 2 MLJ 614 (refd)

A *PhileoAllied Bank (M) Bhd v Koshish Credit & Leasing Sdn Bhd* [2002] 1 MLJ 245 (refd)
PP v Mohd Noor bin Jaafar [2005] 6 MLJ 745 (refd)
Standard Chartered Bank Malaysia Bhd v Eden Enterprises (M) Bhd [2003] 3 MLJ 81 (refd)
B *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor* [1999] 1 MLJ 266 (refd)
Victoria v Commonwealth (1971) 122 CLR 363 (refd)

Legislation referred to

C Banking and Financial Institutions Act 1989 s 50, 50(1), 50(3), 50(4), 50(6), 50(7)
Courts of Judicature Act 1964 ss 7(1), 7(2), 23(1), 23(1)(a), 23(1)(b), 23(1)(c), 23(1)(d)
Federal Constitution art 121(3)
D National Land Code
Rules of the High Court 1980 O 14, O 15 r 7(2)

Appeal from: Suit No 22–61 of 2006–I (High Court, Kuching)

E *James Lo (George Lo & Partners) for the appellants.*
Sim Hui Chuang (Lim Lip See with him) (Reddi & Co) for the respondent.

Low Hop Bing JCA (delivering judgment of the court):

F INTRODUCTION

[1] On 15 June 2007, the learned judge of the High Court in Sabah and Sarawak at Kuching dismissed the summons in chambers of, inter alia, the first, third and fourth defendants (collectively 'the defendants') who sought to
G strike out the plaintiff's writ and statement of claim. Meanwhile, the High Court allowed the plaintiff's summons in chambers for substitution.

[2] On 28 January 2008, we dismissed the defendants' appeal with costs.

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[3] Our grounds are given below.

FACTUAL BACKGROUND

I **[4]** Pantai Bayu Emas Sdn Bhd, the first defendant, is a borrower of the plaintiff, Southern Bank Bhd ('Southern Bank') under banking facilities guaranteed by three guarantors, two of whom are Wu Sui Look and Kuek Swee Ho, the third and fourth defendants respectively.

[5] Southern Bank had filed a suit in the High Court in Sabah and Sarawak at Kuching ('the Kuching suit') against the first defendant and the guarantors to recover the amounts owing under the banking facilities.

[6] By an agreement entered into between Southern Bank and CIMB Bank Bhd ('CIMB Bank'), Southern Bank assigned to CIMB Bank all its rights, assets and liabilities including all legal proceedings. Following such assignment, Southern Bank and CIMB Bank made a joint application to the High Court in Malaya at Kuala Lumpur, pursuant to the Banking and Financial Institutions Act 1989 ('BAFIA'), and obtained a vesting order on 6 September 2006 ('the vesting order').

[7] Based on the vesting order, Southern Bank and CIMB Bank made an application in the Kuching suit for substitution of Southern Bank by CIMB Bank as the plaintiff ('the substitution application').

[8] The defendants then filed an application to strike out the Kuching suit ('the striking out application') on the grounds that:

(i) the vesting order is incompetent to effect the transfer of Southern Bank's claim to CIMB Bank; and

(ii) CIMB Bank does not have the requisite locus standi in the Kuching suit.

[9] Both the aforesaid applications revolve around the legal effect of the vesting order.

[10] The High Court:

(i) granted the order for substitution; and

(ii) dismissed the striking out application.

LEGAL EFFECT OF VESTING ORDER

[11] The defendants' learned counsel Mr James Lo relied on s 23(1) of the Courts of Judicature Act 1964 ('CJA') and *Lee Hui Jian (f) v Public Bank Bhd* [2007] 2 CLJ 551 (HC), to support his contention that the plaintiff has no locus standi as the vesting order made by the High Court in Malaya at Kuala Lumpur under s 50 of the BAFIA is ineffectual in transferring to and vesting in CIMB Bank all Southern Bank's rights, assets and liabilities in Sarawak.

[12] The plaintiff's learned counsel, Mr Sim Hui Chuang (Mr Lim Lip See with him) disagreed, and referred to:

(i) section 50(1), (3), (4), (6) and (7) of the BAFIA;

A (ii) *Leong Moh Sawmill Co Sdn Bhd (in liquidation) v Standard Chartered Bank & Ors* [1996] 2 MLJ 614 (CA);

(iii) *PhileoAllied Bank (M) Bhd v Koshish Credit & Leasing Sdn Bhd* [2002] 1 MLJ 245 (HC);

B (iv) *Standard Chartered Bank Malaysia Bhd v Eden Enterprises (M) Bhd* [2003] 3 MLJ 81 (HC);

(v) section 7(2) of the CJA; and

(vi) article 121(3) of the Federal Constitution.

C

[13] From the above submissions, we identify the question for determination in this appeal as follows:

> Is the vesting order made under s 50 of BAFIA ('s 50') by the Kuala Lumpur
> D branch of the High Court in Malaya effectual in transferring to and vesting in CIMB Bank all Southern Bank's rights, assets and liabilities throughout all the territories of Malaysia viz Malaya, Sabah and Sarawak?

[14] Two judges sitting separately in the High Court in Sabah and Sarawak
E have the occasion to consider the above question. They have apparently given two divergent views. By the advent of the instant appeal, the responsibility is now reverted to this court to resolve these divergent views.

[15] In *Lee Hui Jian (f)*, a similar vesting order made under s 50 was
F considered by Linton Albert J of the High Court in Sabah and Sarawak at Sibu. The question for determination was formulated as follows:

> Simply put, the question to be determined was whether the vesting order given by
> G the High Court in Malaya at Kuala Lumpur was competent to effect the transfer of the finance company's business to and vest it in the plaintiff to clothe it with the requisite locus standi, bearing in mind the fact that the hire purchase agreement was entered into in Sibu, Sarawak and so were the subject matter and the parties to the hire purchase agreement.

H **[16]** His Lordship held that:

(i) the vesting order given by the High Court in Malaya at Kuala Lumpur must of necessity be ineffectual in transferring to the plaintiff the finance company's business, assets and liabilities in Sibu, Sarawak; and

I (ii) the vesting order could only have been effectual if it had been made by the High Court in Sabah and Sarawak.

[17] We note that in *Lee Hui Jian*, the learned judge had recognised the jurisdiction of the High Court in Malaya at Kuala Lumpur to make the vesting order, but was unable to sustain the extent and applicability of the vesting order beyond the territorial jurisdiction of the High Court in Malaya. Reference was made to s 50; and the relevant portions of s 23(1)(a), (b), (c) and (d) of the CJA, which are reproduced as follows:

> 23 Civil jurisdiction — general
>
> (1) ... the High Court shall have *jurisdiction to try all civil proceedings where —*
>
> (a) the cause of action arose;
>
> (b) the defendant or one of several defendants resides or has his place of business;
>
> (c) the facts on which the proceedings are based exist or are alleged to have occurred; or
>
> (d) any land the ownership of which is disputed is situated,
>
> within the local jurisdiction of the Court...

[18] A diametrically opposite view was given in the judgment which is now the subject matter of the instant appeal. Clement Skinner J of the High Court in Sabah and Sarawak at Kuching held that the vesting order is effectual to transfer and vest in CIMB Bank all Southern Bank's rights, assets and liabilities in any part of Malaysia including all legal proceedings involving Southern Bank to CIMB Bank throughout the whole of Malaysia.

[19] It is abundantly clear to us that the correctness or otherwise of the decision in *Lee Hui Jian* depends on whether s 50; and s 23(1) of the CJA have been correctly applied by the learned judge there.

[20] We shall consider s 23(1) of the CJA first. We note that s 23(1) deals with the 'jurisdiction to try', which in turn is founded on certain jurisdictional facts specifically stated in para (a) to (d) therein. Section 23(1) does not deal with nor is it intended to regulate the efficacy of a vesting order. It does not in any way exclude the operation of an order, made by one High Court, in the 'local jurisdiction' of another High Court. In other words, s 23(1) does not exclude the operation, in Sabah and Sarawak, of the vesting order made by the High Court in Malaya at Kuala Lumpur. The efficacy or effect of the orders of the two High Courts, viz the High Court in Malaya; and the High Court in Sabah and Sarawak (see art 121(1) of the Federal Constitution, and s 3 of the CJA), are provided in s 50(1), (3), (4), (6) and (7) of the BAFIA; s 7(2) of the CJA and art 121(3) of the Federal

Constitution. Although s 50(1), (3), (4), (6) and 7 of the BAFIA had been considered in *Lee Hui Jian*, s 7(2) and art 121(3) had not been. These written laws require more elaborate consideration now.

[21] In our judgment, the intention of the law expressed in s 50(1), (3), (4), (6) and (7) as a whole is to regulate the application for a vesting order and to facilitate the effectual transfer of the whole or part of the business, assets, rights and liabilities from the predecessor bank to the successor bank, and not to set up obstacles to stand in the way of substantial justice.

[22] By way of amplification, so far as material, s 50(1) provides as follows:

> ... the licensed institution whose business is to be transferred (hereinafter referred to as 'the transferor') and the licensed institution or other person to whom the transfer is to be made (hereinafter referred to as 'the transferee') may make *a joint application to the High Court* by way of an ex parte originating summons for such order of the Court as may be required by them to facilitate or enable the agreement or arrangement being given effect to, and *in such application* there may be sought all or any of the following orders:
>
> (Emphasis added.)

[23] In determining whether the vesting order is effectual in Sabah and Sarawak, the expressions 'a joint application to the High Court' and 'such application' in s 50(1) assume a special significance. In our view, these two expressions envisage the making of a single application to one High Court only, and the vesting order made pursuant to the application would have effect throughout the whole of Malaysia.

[24] Section 50(3) provides for the mechanism of vesting the assets and business of one entity in the other by the making of one order of the High Court. The vesting order shall have effect according to its terms 'notwithstanding anything in any law or rule of law' as enacted in the following relevant portion:

> (3) Where the order of the High Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, … then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee …, and *the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law*, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice of the proceedings under this section or of other related proceedings.
>
> (Emphasis added.)

[25] The expression 'notwithstanding anything in any law or in any rule of law' ('the expression') in s 50(3) has received extensive exposition and explanation in several authorities. By way of illustration: A

(1) In *Leong Moh Sawmill Co Sdn Bhd (in liquidation)*, the axis of the dispute is whether a foreign bank, the Standard Chartered Bank ('the predecessor bank') can continue to pursue matters relating to foreclosure proceedings in its name after it had already sold all its banking business in Malaysia to Standard Chartered Bank Malaysia Bhd ('the successor bank') pursuant to a vesting order made under s 50(1). In view of the expression in s 50(3), Siti Norma Yaakob JCA (later CJ (Malaya)) held, inter alia, as follows: B C

(a) the vesting order was such that there was no requirement for a formal order of substitution under O 15 r 7(2) of the Rules of the High Court 1980; D

(b) the successor bank was deemed to be a party in all proceedings initiated by or commenced against the predecessor bank; and

(c) the transfer of any property or business pursuant to the vesting order shall on and from the transfer date become vested in or held by the transferee ie a transmission of interest from one legal entity to another. E

(2) *Leong Moh Sawmill Co Sdn Bhd (in liquidation)*, was followed by me in *PhileoAllied Bank*, which also concerns foreclosure proceedings. The chargor there sought an order that the chargee's originating summons be struck out or stayed until the registered charge had been registered in the name of Malayan Banking Bhd (the successor bank) and contended that the chargee had failed to comply with the order vesting the plaintiff's properties in the successor bank. I had no difficulty in dismissing the defendant's objection and held that: F G

(a) the vesting order is all encompassing; and

(b) the expression in s 50(3) allows the foreclosure proceedings to continue without the necessity of substituting the successor bank as the plaintiff, or transferring and registering the registered charge in the name of the successor bank, and is intended to clearly and unambiguously take overriding precedence over the National Land Code; and H

(3) In *Standard Chartered Bank Malaysia Bhd*, the Standard Chartered Bank, (the predecessor bank) agreed to give the defendant banking facilities. The plaintiff is the successor bank under s 50. On the defendant's default, the successor bank sued for and obtained, from the registrar, summary judgment under O 14 of the Rules of the High I

Court 1980 for the outstanding debt. On appeal to judge in chambers, Selventhiranathan J also followed *Leong Moh Sawmill Co Sdn Bhd (in liquidation)*, and held, inter alia, that:

(a) the defendant's contention that the vesting order was ultra vires BAFIA was a non-issue, in view of the clear provisions of BAFIA, particularly s 50(3) providing for the non-challengeability of the vesting order made under s 50(1); and

(b) BAFIA is enabling in nature and not prohibitory in that it makes possible the transfer of the predecessor bank's business in Malaysia to the successor bank in a single application to the High Court, thereby obviating the need for a piecemeal transfer of the assets and liabilities related to the business.

[26] Next, s 50(4) provides for the vesting order to be published in not less than two daily newspapers in Malaysia. This is clearly intended to give nationwide publicity to the vesting order and to give nationwide effect to it. Had it been intended to be effective only in certain parts of Malaysia eg either in Malaya or Sabah and Sarawak only, then there would have been no reason to stipulate or ensure publication in Malaysia as a mandatory requirement thereunder.

[27] Further, s 50(6) contains mandatory provisions which are applicable in all the territories of Malaysia viz Malaya, Sabah and Sarawak, by way of 'an order of the High Court' ie one and the same order. For completeness, s 50(6) merits reproduction as follows:

> (6) Where *an order of the High Court* under subsection (1) vests any alienated land, or any share or interest in any alienated land, in the transferee —
>
> (a) *The High Court shall*, where such alienated land is in West Malaysia, pursuant to s 420(2) of the National Land Code, cause a copy of the order to be served on the Registrar of Titles or the Land Administrator, as the case may be, immediately after the making of the order so that the Registrar of Titles or the Land Administrator, as the case may be, gives effect to the provisions of the said s 420(2), (3) and (4);
>
> (b) *Where such alienated land is in Sabah*, the transferee shall, as soon as practicable after the order has been made, present an authenticated copy of such order to the Registrar for registration of the vesting of the alienated land or of the share or interest in alienated land as provided under the Land Ordinance of Sabah; or

(c) *Where such alienated land is in Sarawak*, the transferee shall, as soon as practicable after the order has been made, produce an authenticated copy of such order to the Registrar for the registration of the vesting of the alienated land or of the share or interest in alienated land, in the transferee, as provided under s 171 of the Land Code of Sarawak.

(Emphasis added.)

[28] Section 50(7) travels the extra miles beyond our shores and provides as follows:

(7) *An order of the High Court* under subsection (1) *may relate to any property or business of the transferor outside Malaysia* and, if it so relates, effect may be given to it either in accordance with any reciprocal arrangements relating to *enforcement of judgments* that may exist between Malaysia and *the country, territory or place outside Malaysia in which such property or business is*, or where there are no such arrangements, in accordance with the law applicable in such country, territory or place.

(Emphasis added.)

[29] Section 50(7) not only empowers the vesting order to cover property or business outside Malaysia, but also specifies how, after a vesting order has been made, effect may be given to that order or how it could be enforced either by way of reciprocal enforcement of judgments between Malaysia and the foreign country, territory or place outside Malaysia; or in accordance with the law of the foreign country, territory or place.

[30] Our view that the vesting order enables the transfer of the business and assets of Southern Bank to CIMB Bank pursuant to one single application filed in the High Court in Malaya at Kuala Lumpur, for the purpose of giving effect to the vesting exercise in Malaysia as a whole, is further accentuated by s 7(2) of the CJA and art 121(3) of the Federal Constitution.

[31] Section 7(2) contains mandatory provisions prescribing that orders issued or made by the authority of the High Court respecting any cause or matter within its jurisdiction, eg the vesting order, shall have full force and effect throughout Malaysia, as seen in these words:

7 Process of Courts

(3) All writs, summonses, warrants, *orders*, rules, notices, and other processes whatsoever, whether civil or criminal, issued or made by the

authority of the Court respecting any cause or matter within its jurisdiction *shall have full force and effect and may be served or executed anywhere within Malaysia.*

(Emphasis added.)

[32] Section 7(2) has indeed further acquired an elevated status in the constitutional domain by way of an equipollent provision. It has been enshrined in the supreme law of our land ie the Federal Constitution, in which art 121(3) declares as follows:

(3) Subject to any limitations imposed by or under federal law, any *order*, decree, judgment or process of the courts referred to in Clause (1) or of any judge thereof shall (so far as its nature permits) *have full force and effect according to its tenor throughout the Federation*, and may be *executed or enforced in any part of the Federation accordingly*; and federal law may provide for *courts in one part of the Federation or their officers to act in aid of courts in another part.*

(Emphasis added.)

[33] The intention and implication of art 121(3) may be determined by reference to the relevant principles of constitutional interpretation.

[34] In *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, Raja Azlan Shah CJ (Malaya) (now HRH the Sultan of Perak), speaking for a panel of five judges of the Federal Court at p 32, concisely set out the principles of interpreting a constitution in the following words:

In interpreting a constitution, two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way with less rigidity and more generosity than other Acts (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21). A constitution is sui generis calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms. The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *AG of St Christopher, Nevis and Anguilla v Reynolds* [1979] 3 All ER 129 at p 136.

[35] These principles were applied by Mohd Azmi FCJ (as he then was) in *Faridah Begum bte Abddullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'ayatuddin Al Mu'adzam Shah* [1996] 1 MLJ 617 (SC); and also by me in *Dato' Hari Menon @ Dato' T Puraharan a/l CP Ramakrishnan (suing as legal representative of DYMM Tuanku Ja'afar Ibni Almarhum Tuanku Abdul Rahman, Yang di Pertuan Besar Negeri Sembilan Darul Khusus) v Texas Encore LLC & Ors* [2005] 4 MLJ 506 (HC); and *Public Prosecutor v Mohd Noor bin Jaafar* [2005] 6 MLJ 745 at pp 750–751 (HC).

[36] In *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor* [1999] 1 MLJ 266, the Court of Appeal through the judgment of Gopal Sri Ram JCA further expounded the following principles:

(1) Generally speaking, the rules of construction that guide a court in the interpretation of ordinary statutes apply with equal force when interpreting the Federal Constitution. But there are important differences. For, the Federal Constitution, unlike any ordinary statute, does not merely declare the law. It creates and regulates the law making power of the federation. It also creates and defines the various branches of government. It confers upon individuals certain fundamental and inalienable human rights, such as equality before the law. Its language must accordingly receive a broad and liberal construction in order to advance the intention of its framers. Or as Lord Diplock put it in *Attorney-General of the Gambia v Momodou Jobe* [1984] AC 689 at p 700:

> A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction.

(2) A court, while rendering a broad and liberal construction to the language employed by the Federal Constitution, is not entitled 'to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors' (per Gwyer CJ in *Re Central Provinces & Berar Sales of Motor Spirit & Lubricants Taxation Act* AIR 1939 FC 1.) This general rule is, however, subject to an important qualification. Where the language of the constitution is open to two constructions, a court should adopt the construction 'which will ensure the smooth and harmonious working of the constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory' (per Shelat and Grover JJ in *Kesavananda Bharati v The State of Kerala* AIR 1973 SC 1461 at p 1581). Thus, a court, for the purpose of rendering a harmonious interpretation, is entitled to make

implications into the language of the constitution. An implication here refers to something that 'explain, perhaps limits, the effect of what is expressed' (per Windeyer J in *Victoria v Commonwealth* (1971) 122 CLR 363 at p 401).

(See also *Mohd Noor bin Jaafar*)

[37] Upon applying the above principles of constitutional interpretation, we are of the view that art 121(3) clearly provides for any order or judgment to have full force and effect according to its terms throughout all the territories constituting the federation ie Malaya, Sabah and Sarawak. It also enables federal law to provide for one High Court to act in aid of the other.

CONCLUSION

[38] On the foregoing grounds, we hold that the vesting order is effectual in transferring the business of Southern Bank located in any part of Malaysia to CIMB Bank and is effective throughout the whole of Malaysia. The answer to the above question for determination is therefore in the affirmative.

[39] Hence, with the utmost respect, we hold that the decision in *Lee Hui Jian*, has fallen into error and is overruled. The decision against which this appeal arises is correct and is hereby affirmed.

[40] In the circumstances, the defendant's appeal is dismissed with costs. The High Court orders dismissing the defendants' application, and allowing the plaintiff's application for substitution are affirmed. Deposit to the plaintiff on account of taxed costs.

[41] My learned colleagues, Zainun Ali and Hasan Lah JJCA, have read this judgment in draft and have expressed their agreement to make it the judgment of the court.

Appeal dismissed with costs.

Reported by Andrew Christopher Simon